

§ 26.67

10 CFR Ch. I (1–13 Edition)

30 days, except as permitted in paragraph (e)(1) of this section, the licensee or other entity shall take the following actions:

(i) The licensee or other entity shall subject the individual to random selection for pre-access drug and alcohol testing at a one-time probability that is equal to or greater than the normal testing rate specified in § 26.31(d)(2)(vii) calculated for a 30-day period;

(ii) If the individual is not selected for pre-access testing under paragraph (e)(2)(i) of this section, the licensee or other entity need not perform pre-access drug and alcohol tests; or

(iii) If the individual is selected for pre-access testing under this paragraph, the licensee or other entity shall—

(A) Verify that the individual has negative results from alcohol testing and collect a specimen for drug testing before reinstating authorization; and

(B) Verify that the drug test results are negative within 5 business days of specimen collection or administratively withdraw authorization until negative drug test results are received.

(f) *Administrative withdrawal of authorization.* If a licensee or other entity administratively withdraws an individual's authorization under paragraphs (d)(1)(ii) or (e)(2)(iii)(B) of this section, and until the drug test results are known, the licensee or other entity may not record the administrative action to withdraw authorization as an unfavorable termination. The individual may not be required to disclose the administrative action in response to requests for self-disclosure of potentially disqualifying FFD information, except if the individual's authorization was subsequently denied or terminated unfavorably by a licensee or entity. Immediately on receipt of negative test results, the licensee or other entity shall ensure that any matter that could link the individual to the temporary administrative action is eliminated from the donor's personnel record and other records.

(g) *Sanctions.* If an individual has confirmed positive, adulterated, or substituted test results from any drug, validity, or alcohol tests that may be required in this section, the licensee or

other entity shall, at a minimum and as appropriate—

(1) Deny authorization to the individual, as required by § 26.75(b), (d), (e)(2), or (g);

(2) Terminate the individual's authorization, if it has been reinstated, under § 26.75(e)(1) or (f); or

(3) Grant authorization to the individual under § 26.69.

§ 26.67 Random drug and alcohol testing of individuals who have applied for authorization.

(a) When the licensee or other entity collects specimens from an individual for any pre-access testing that may be required under §§ 26.65 or 26.69, and thereafter, the licensee or other entity shall subject the individual to random testing under § 26.31(d)(2), except if—

(1) The licensee or other entity does not grant authorization to the individual; or

(2) The licensee or other entity relies on drug and alcohol tests that were conducted before the individual applied for authorization to meet the applicable requirements for pre-access testing. If the licensee or other entity relies on drug and alcohol tests that were conducted before the individual applied for authorization, the licensee or other entity shall subject the individual to random testing when the individual arrives at a licensee's or other entity's facility for in-processing and thereafter.

(b) If an individual is selected for one or more random tests after any applicable requirement for pre-access testing in §§ 26.65 or 26.69 has been met, the licensee or other entity may grant authorization before random testing is completed, if the individual has met all other applicable requirements for authorization.

(c) If an individual has confirmed positive, adulterated, or substituted test results from any drug, validity, or alcohol test required in this section, the licensee or other entity shall, at a minimum and as appropriate—

(1) Deny authorization to the individual, as required by § 26.75(b), (d), (e)(2), or (g);

(2) Terminate the individual's authorization, if it has been granted, as required by § 26.75(e)(1) or (f); or

(3) Grant authorization to the individual under § 26.69.

§ 26.69 Authorization with potentially disqualifying fitness-for-duty information.

(a) *Purpose.* This section defines the management actions that licensees and other entities who are subject to this subpart shall take to grant or maintain, at the licensee's or other entity's discretion, the authorization of an individual who is in the following circumstances:

(1) Potentially disqualifying FFD information within the past 5 years has been disclosed or discovered about the individual by any means, including, but not limited to, the individual's self-disclosure, the suitable inquiry, drug and alcohol testing, the administration of any FFD program under this part, a self-report of a legal action, behavioral observation, or other sources of information, including, but not limited to, any background investigation or credit and criminal history check conducted under the requirements of this chapter; and

(2) The potentially disqualifying FFD information has not been reviewed and favorably resolved by a previous licensee or other entity under this section.

(b) *Authorization after a first confirmed positive drug or alcohol test result or a 5-year denial of authorization.* The requirements in this paragraph apply to individuals whose authorization was denied or terminated unfavorably for a first violation of an FFD policy involving a confirmed positive drug or alcohol test result and individuals whose authorization was denied for 5 years under § 26.75(c), (d), (e)(2), or (f). To grant, and subsequently maintain, the individual's authorization, the licensee or other entity shall—

(1) Obtain and review a self-disclosure and employment history from the individual that addresses the shorter period of either the past 5 years or since the individual's last period of authorization was terminated, and verify that the self-disclosure does not contain any previously undisclosed potentially disqualifying FFD information before granting authorization;

(2) Complete a suitable inquiry with every employer by whom the individual claims to have been employed during the period addressed in the employment history obtained under paragraph (b)(1) of this section, and obtain and review any records that other licensees or entities who are subject to this part may have developed related to the unfavorable termination or denial of authorization;

(3) If the individual was subject to a 5-year denial of authorization under this part, verify that he or she has abstained from substance abuse for at least the past 5 years;

(4) Ensure that an SAE has conducted a determination of fitness and concluded that the individual is fit to safely and competently perform his or her duties.

(i) If the individual's authorization was denied or terminated unfavorably for a first confirmed positive drug or alcohol test result, ensure that clinically appropriate treatment and followup testing plans have been developed by an SAE before granting authorization;

(ii) If the individual was subject to a 5-year denial of authorization, ensure that any recommendations for treatment and followup testing from an SAE's determination of fitness are initiated before granting authorization; and

(iii) Verify that the individual is in compliance with, and successfully completes, any followup testing and treatment plans.

(5) Within 10 business days before granting authorization, perform a pre-access alcohol test, collect a specimen for drug testing under direct observation, and ensure that the individual is subject to random testing thereafter. Verify that the pre-access drug and alcohol test results are negative before granting authorization.

(6) If the individual's authorization was denied or terminated unfavorably for a first confirmed positive drug or alcohol test result and a licensee or other entity grants authorization to the individual, ensure that the individual is subject to unannounced testing at least quarterly for 3 calendar years after the date the individual is granted authorization. Both random